

BEFORE THE SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

JOHN and NANCY HUTCHINS,)	
)	SHB NO. 91-69
Appellants,)	
)	
v.)	FINAL FINDINGS OF FACT,
)	CONCLUSIONS OF LAW
CITY OF SEATTLE and JAMES)	AND ORDER
LEE,)	
)	
Respondent.)	

This matter came on for hearing before the Shorelines Hearings Board, William A. Harrison, Administrative Appeals Judge, presiding, and Board Members Harold S. Zimmerman, Annette S. McGee, Nancy Burnett, Dave Wolfenbarger and Robert Patrick.

The matter is the request for review of a shoreline permit granted by the City of Seattle to James A. Lee for replacement of one houseboat by another.

Appearances were as follows:

1. Ross Radley, Attorney at Law, for appellant.
2. Rodney T. Harmon, Attorney at Law, for respondent James A. Lee.
3. Robert D. Tobin, Assistant City Attorney, for respondent City of Seattle.

The hearing was conducted at Seattle, Washington on May 26, 1992.

Gene Barker and Associates provided court reporting services.

Witnesses were sworn and testified. Exhibits were examined. The Board viewed the site of the proposal in the company of Judge Harrison and the parties. From testimony heard and exhibits examined, the Shorelines Hearings Board makes these

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER
SHB NO. 91-69

(1)

1
2 FINDINGS OF FACT

3 I

4 This matter arises on Portage Bay between Lake Union and Lake Washington in the
5 City of Seattle.

6 II

7 The case concerns replacement of one houseboat with another in an existing moorage.

8 III

9 The "old" houseboat (KCA 536) had a total float area of 1,378 square feet. This
10 includes a portion of the float (one log) which is 2' x 45.5' lying just below water surface, a
11 total of 91 square feet. This also includes a deck extending from the float over water 4' x 26',
12 a total of 104 square feet.

13 IV

14 The "new" houseboat (KCA 300) has a total float area of 1,295 square feet. It
15 measures 52 feet, 2 inches in length. It is 24 feet, 6 inches wide on one end and 25 feet,
16 2 inches wide on the other end.

17 V

18 Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

19 From these Findings of Fact, the Board issues these:

20 CONCLUSIONS OF LAW

21 I

22 By Partial Summary Judgment entered May 22, 1992, in this matter, we have
23 concluded that the applicable regulation here is SMC 23.60.196(C)(1). In pertinent part, this
24 provides:

1 a. The total float area of the floating home float shall not be increased.

2 II

3 The term "total float area" is not specifically defined in the Seattle shoreline
4 program where it appears. The words of a statute, or regulation, must be understood
5 in their usual and ordinary sense in the absence of a special definition. See Publishers For
6 Co. v. State, 91 W.2d 814, 816, 505 P.2d 453 (1973). The usual and ordinary meaning
7 of words can be ascertained by resort to the dictionary. East v. King County, 22 Wn.
8 589 P.2d 805 (1978).

9 III

10 Webster's Third New International Dictionary (1971) defines the noun "float"
11 "the act or state of floating." "Floating" is then defined to mean "buoyed upon or
12 The second definition of "float" means "something broad and shallow and flat."

13 IV

14 We conclude that the term "total float area" as used in SMC 23.60.196(C)(1)
15 broad, shallow and flat foundation of a houseboat whether buoyed slightly above or
16 below the water. This would include not only the central mass of a houseboat found
17 also decks overhanging the water from the top surface of that mass and logs or other
18 elements at the bottom surface of that mass.

19 V

20 Both appellant and the City have cited the matter of Frank Granat, Jr. (file #
21 032), a case before the Seattle Hearing Examiner decided in 1981. Therein, the Seattle
22 Department of Construction and Land Use rendered testimony by its compliance officer
23 Schien, that:

1 " . . . a floating home's float area is any area of a floating home that is usable either
2 for walking or indoor or outdoor storage."

3 This testimony falls short of being a complete definition of "total float area." The complete
4 definition includes buoyant elements, such as the log on the old houseboat here, which are part
5 and parcel of the float but which lie just below water surface. See Conclusion of Law II-IV,
6 above. There are no findings in the Granat decision of the Hearing Examiner that any buoyant
7 element lying just below the surface was at issue in that case.

8 VI

9 Respondent Lee, urges that the term "total float ara" in SMC 23.60.190(C)(1) should
10 be read as equivalent to the term "float, decks, roof overhang and accessory floats" as used in
11 SMC 23.60.196(B)(1)(b) and -(C)(2)(b). We reject this interpretation. Had Seattle intended
12 to use those words in the subsection at issue it could have done so as easily as in the other
13 subsections, yet it chose not to do so. We adhere to the interpretation of "total float area"
14 which comes from giving those words their usual and ordinary meaning. See Conclusions II-
15 IV, above.

16 VII

17 The total float area of the old floating home was not increased by its replacement with
18 the new floating home. That replacement is consistent with the applicable regulation, SMC
19 23.60.196(C)(1)(a).

20 VIII

21 Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.

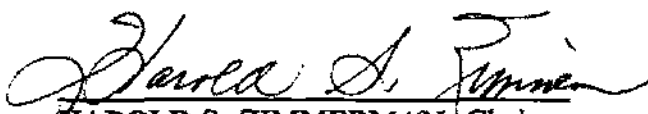
22 From the foregoing, the Board issues this:

ORDER

The shorelines substantial development permit granted by the City of Seattle to James A. Lee for replacement of one houseboat with another is hereby affirmed.

DONE at Lacey, WA, this 5th day of June, 1992.

SHORELINES HEARINGS BOARD

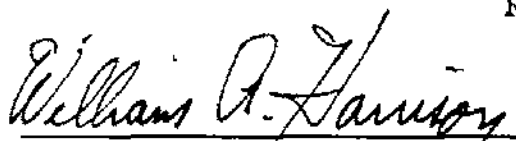

HAROLD S. ZIMMERMAN, Chairman


ANNETTE S. MCGEE, Member


NANCY BURNETT, Member


DAVE WOLFENBARGER, Member


ROBERT L. PATRICK, Member


WILLIAM A. HARRISON
Administrative Appeals Judge

S91-69F

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER
SHB NO. 91-69

lit

BEFORE THE SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

JOHN and NANCY HUTCHINS,)	
)	
Appellants,)	SHB No. 91-69
)	
v.)	
)	PARTIAL SUMMARY
THE CITY OF SEATTLE and)	JUDGMENT
JAMES A. LEE,)	
)	
Respondents.)	
)	

Pursuant to the Pre-Hearing Order entered December 24, 1991, a dispositive motion was filed and briefed by the parties. The following written record was considered in the disposition of these motions:

1. Motion for Summary Judgment with supporting documents filed by Respondent Lee on March 26, 1992.
2. Response in Opposition with supporting documents filed by Appellant Hutchins on April 6, 1992.
3. Reply to Motion with supporting documents by Appellant Lee and Respondent City of Seattle, filed April 17, 1992.

I

THE APPLICABLE REGULATION

It is undisputed that this matter concerns the proposal to replace one houseboat with another. The applicable regulation in that situation is SMC 23.60.196(C)(1). This is the situation expressly contemplated by that regulation where it refers to the "replacement" of a

1 floating home. We have previously so held with regard to relocation of an existing houseboat.
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3 Lake Union Moorings Associates v. City of Seattle and Masciarelli, SHB No. 89-46 (1989).

4 There are no genuine issues of material fact as to elements b. through g. of SMC
5 23.60.196(C)(1). There is a genuine issue of material fact as to element a. which provides
6 that:

7 a. The total float area of the floating home shall not be
8 increased.

9 Summary judgment is granted that SMC 23.60.196(C)(1) is the applicable regulation.,
10 Summary Judgment is granted for respondents on each element thereof excepting a. on which
11 summary judgment is denied.

12 II

13 PARKING DUE TO MOORAGE OR STORAGE OF WATERCRAFT

14 The zoning code requirement of one parking space per residential unit, SMC
15 23.54.015, is met by the provision of one off street parking space for the proposed floating
16 home. This is undisputed. So is the fact that adding the floating home in question would
17 bring the total residences on the site to three, while seven off street parking sites are provided,
18 more than twice the requirement of the zoning code. Appellant urges, however, that the
19 mooring and storage of watercraft should have resulted in further parking requirements under
20 the State Environmental Policy Act, chapter 43.21C RCW. We disagree.

21 First, our review is of a shoreline substantial development permit. The permitted
22 development here concerns the replacement on one floating home with another. There has
23 been no showing, by affidavit, interrogatory or other competent proof that the mooring or
24 storage of boats will be affected in any way by the replacement of one floating home with
25 another.

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2 Second, our review is limited to the granting, denying or rescinding of shoreline
3 permits. RCW 90.58.180. Here, there is no permit concerning boat moorage or storage. We
4 conclude that this is a matter beyond our jurisdiction properly directed to the enforcement
5 authority of the City of Seattle or State Department of Ecology. See RCW 90.58.210.

6 III

7 PREVENTION OF WATERCRAFT OPERATION

8 Appellant contends that watercraft operation results in "chronic trespassing on the
9 Hutchins' waterway by watercraft users originating from the Lee site." (Hutchins Response,
10 p. 7, lines 14-15). This must be answered by the observation that trespass or private
11 ownership are concepts foreign to navigable waters, such as those at issue. As stated in
12 Wilbour v. Gallagher, 77 Wn.2d 306 (1969):

13 " . . . the public has the right to go where the navigable waters go
14 even though the navigable waters lie over privately owned lands."

15 IV

16 We have carefully examined the other issues raised by appellant in this matter and find
17 them to involve no genuine issue of material fact. We further find them to be without merit.
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1
2 **ORDER**

3 **WHEREFORE IT IS ORDERED:**

4 Summary Judgment is granted for respondents on all issues excepting whether the total
5 float area is increased under SMC 23.60.196(C)(1)(a).

6 DONE at Lacey, WA, this 22nd day of May, 1992.

7 **SHORELINES HEARINGS BOARD**

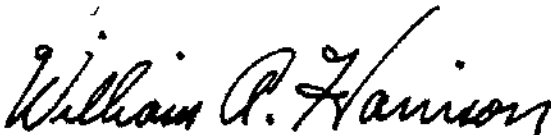
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10 **HAROLD S. ZIMMERMAN, Chairman**

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13 **ANNETTE S. MCGEE, Member**

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16 **NANCY BURNETT, Member**

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19 **ROBERT L. PATRICK, Member**

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22 **DAVE WOLFENBARGER, Member**

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25 **WILLIAM A. HARRISON**
26 **Administrative Appeals Judge**

27 **S91-69SJ**